

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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901 NORTH 5TH STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of

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AIR CAPITOL
PLATING, INC.,
Wichita, Kansas,

Respondent.

EPA Docket No. CAA-7-99-0027

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (hereinafter "the Act"), 42 U.S.C. § 7413(d).

2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated the National Emission Standards for Hazardous Air Pollutants (hereinafter "NESHAPs"), 40 C.F.R. Part 63, Subpart GG, promulgated pursuant to Section 112 of the Act, 42 U.S.C. § 7412, and that Respondent is therefore in violation of Section 112 of the Act, 42 U.S.C. § 7412. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for such violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.

4. Respondent is Air Capitol Plating, Inc. ("ACP"), a company incorporated under the laws of Kansas and registered to do business in Kansas. ACP owns and operates the facilities located at 1702 South Knight Street in Wichita, Kansas.

5. Respondent is a "person" as defined in Section 392(e) of the Act, 42 U.S.C. § 7602(e).

Statutory and Regulatory Background

6. Section 112 of the Act, 42 U.S.C. § 7412, grants the Administrator of EPA authority to regulate hazardous air pollutants which may have an adverse effect on health or the environment.

7. Pursuant to Section 112 of the Act, the Administrator established emission standards, codified at 40 C.F.R. Part 63, Subpart GG, for aerospace manufacturing and rework facilities. The standards for hazardous air pollutants are called National Emission Standards for Hazardous Air Pollutants (NESHAPs).

8. Section 113(d) of the Act, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Act referenced therein, including Section 112. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, penalties of up to \$27,500 per day of violation may be assessed for violations which occur after January 30, 1997.

Violations

9. The Complainant hereby states and alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Act, as follows:

General Allegations

10. Respondent is subject to 40 C.F.R. Part 63, Subpart GG, since it is an owner and operator of a facility that is engaged, either in part or in whole, in the manufacture or rework of commercial, civil, or military aerospace vehicles or components.

11. On or about January 13, 1999, EPA representatives performed an Air Compliance Inspection at ACP's Wichita, Kansas facility.

12. On or about March 22, 1999, EPA issued an order to ACP pursuant to Section 114 of the Act, 42 U.S.C. § 7414, requesting information for ACP's Wichita, Kansas facility.

Count I

13. The facts alleged in paragraphs 9 through 12 are realleged and incorporated herein as if fully stated.

14. Pursuant to 40 C.F.R. § 63.744(b), each owner or operator of a new or existing hand-wipe cleaning operation subject to 40 C.F.R. Part 63, Subpart GG must use cleaning solvents that meet one of the requirements specified in §§ 63.744(b)(1), (b)(2), or (b)(3).

15. Respondent used methyl ethyl ketone and trichloroethylene from September 1998 until February 1999 as hand wipe cleaning solvents. These solvents do not meet the requirements of 40 C.F.R. §§ 63.744(b)(1) or (b)(2). Furthermore, Respondent does not have an approved baseline reduction plan, as required by 40 C.F.R. § 63.744(b)(3).

16. Respondent's failure to comply with 40 C.F.R. § 63.744(b) is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count II

17. The facts alleged in paragraphs 9 through 12 are realleged and incorporated herein as if fully stated.

18. Pursuant to 40 C.F.R. § 63.744(c), each owner or operator of a new or existing spray gun cleaning operation subject to 40 C.F.R. Part 63, Subpart GG in which spray guns are used for the application of coatings or any other materials that require the spray guns to be cleaned shall use one or more of the techniques, or their equivalent, specified in 40 C.F.R. §§ 63.744(c)(1) through (c)(4).

19. Respondent used methyl ethyl ketone for atomized spray gun cleaning from September 1998 to March 1999. Respondent cleaned its spray guns by forcing the cleaning solvent through the gun. However, Respondent failed to direct the resulting atomized spray into a waste container that is fitted with a device designed to capture the atomized cleaning solvent emissions, as required by 40 C.F.R. § 63.744(c)(4).

20. Respondent's failure to comply with 40 C.F.R. § 63.744(c) is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count III

21. The facts alleged in paragraphs 9 through 12 are realleged and incorporated herein as if fully stated.

22. Pursuant to 40 C.F.R. § 63.745(c), each owner or operator of a new or existing primer application operation subject to 40 C.F.R. Part 63, Subpart GG shall comply with the organic hazardous air pollutant (HAP) and volatile organic compound (VOC) content limits specified in §§ 63.745(c)(1) through (c)(4) for those coatings that are uncontrolled.

23. As of April 1999, the date of Respondent's response to EPA's information request, Respondent had been using primers since September 1998 that exceeded the organic HAP and VOC content limits stated in 40 C.F.R. §§ 63.745(c)(1) and (c)(2). In its response, Respondent projected that it would come into compliance with these requirements by August 1999.

24. Respondent's failure to comply with 40 C.F.R. § 63.745(c) is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count IV

25. The facts alleged in paragraphs 9 through 12 are realleged and incorporated herein as if fully stated.

26. Pursuant to 40 C.F.R. § 63.745(c), each owner or operator of a new or existing topcoat application operation subject to 40 C.F.R. Part 63, Subpart GG shall comply with the organic HAP and VOC content limits specified in 40 C.F.R. §§ 63.745(c)(1) through (4) for those coatings that are uncontrolled.

27. As of April 1999, the date of Respondent's response to EPA's information request, Respondent had been using topcoats since September 1998 that exceeded the organic HAP and VOC content limits stated in 40 C.F.R. §§ 63.745(c)(3) and (c)(4). In its response, Respondent projected that it would come into compliance with these requirements by August 1999.

28. Respondent's failure to comply with 40 C.F.R. § 63.346(b)(12) is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count V

29. The facts alleged in paragraphs 9 through 12 are realleged and incorporated herein as if fully stated.

30. Pursuant to 40 C.F.R. § 63.745(g), each owner or operator of a new or existing primer or topcoat application operation subject to 40 C.F.R. Part 63, Subpart GG in which any of the coatings that are spray applied contain inorganic HAP, shall comply with the applicable requirements in §§ 63.745(g)(1) through (g)(3).

31. Pursuant to 40 C.F.R. § 63.745(g)(2), when primers or topcoats are applied in a booth or hangar, the owner or operator must use a two-stage dry particulate air pollution control filter system to meet or exceed the efficiency data points in 40 C.F.R. § 63.745(g) Tables 1 and 2 for existing sources; and a three-stage dry particulate air pollution control filter system to meet or exceed the efficiency data points in 40 C.F.R. § 63.745(g) Tables 3 and 4 for new sources.

32. Between September 1998 and April 1999, the date of Respondent's response to EPA's information request, Respondent failed to comply with 40 C.F.R. § 63.745(g) in that its paint booths (#1 - #4; #5 - #7; #8 - #10) did not have the filtration technology required by the regulation. In its response, Respondent projected that it would come into compliance with these requirements by July 1999.

33. EPA's inspection of Respondent's facility revealed the use of paint coatings containing chromium and lead, which are inorganic HAPs, in a number of these paint booths. These chemicals are on the list of hazardous air pollutants in Section 112(b) of the Act, 42 U.S.C. § 7412(b).

34. Respondent's failure to comply with 40 C.F.R. § 63.745(g) is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count VI

35. The facts alleged in paragraphs 9 through 12 are realleged and incorporated herein as if fully stated.

36. Pursuant to 40 C.F.R. § 63.752(b), each owner or operator of a new or existing cleaning operation subject to 40 C.F.R. Part 63, Subpart GG shall record the information specified in paragraphs (b)(1) through (b)(5).

37. Pursuant to 40 C.F.R. § 63.752(b)(3)(iv), Respondent is required to record, for each cleaning solvent used in hand-wipe cleaning operations that does not comply with the composition requirements in § 63.744(b)(1) but does comply with the vapor pressure requirement in § 63.744(b)(2), the amount (in gallons) of each cleaning solvent used each month at each operation.

38. Since September 1998, Respondent has used methyl n-propyl ketone as a cleaning solvent. Methyl n-propyl ketone has a vapor pressure of 27.8 mm Hg at 20 degrees C, which does not comply with 40 C.F.R. § 63.744(b)(1) but does comply with § 63.744(b)(2).

39. Since September 1998, Respondent has not recorded the information required by 40 C.F.R. § 63.752(b)(3)(iv).

40. Respondent's failure to comply with 40 C.F.R. § 63.752(b) is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count VII

41. The facts alleged in paragraphs 9 through 12 are realleged and incorporated herein as if fully stated.

42. Pursuant to 40 C.F.R. § 63.752(c), each owner or operator required to comply with the organic HAP and VOC content limits specified in § 63.745(c) shall record the information specified in paragraphs (c)(1) through (c)(6).

43. Pursuant to 40 C.F.R. § 63.752(c)(1), Respondent is required to record the name and VOC content as received and as applied of each primer and topcoat used at the facility.

44. Since September 1998, Respondent has not recorded the information required by 40 C.F.R. § 63.752(c)(1).

45. Respondent's failure to comply with 40 C.F.R. § 63.752(c) is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count VIII

46. The facts alleged in paragraphs 9 through 12 are realleged and incorporated herein as if fully stated.

47. Pursuant to 40 C.F.R. § 63.752(d), each owner or operator complying with 40 C.F.R. § 63.745(g) for the control of inorganic HAP emissions from primer and topcoat application operations through the use of a dry particulate filter system or a high efficiency particulate air filter system shall record the pressure drop across the operating system once each shift during which coating operations occur.

48. Between July 1997 and March 1999, Respondent did not record the information required by 40 C.F.R. § 63.752(d).

49. Respondent's failure to comply with 40 C.F.R. § 63.752(d) is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Relief

50. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil penalty of up to \$25,000 per day for each violation of the Act. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, penalties of up to \$27,500 per day of violation may be assessed for violations which occur after January 30, 1997. The penalty proposed below is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violations in accordance with the Clean Air Act, Section 113(e), 42 U.S.C. § 7413(e), and the Clean Air Act Stationary Source Civil Penalty Policy, October 25, 1991 (copy enclosed), as well as Respondent's history of any prior violations and degree of culpability.

PROPOSED PENALTY

51. For the violations stated herein, it is proposed that a penalty not to exceed \$27,500 per day per violation be assessed, taking into consideration the size of Respondent's business, the economic benefit of noncompliance and any willfulness of the Respondent.

52. Payment of the total penalty may be made by certified or cashier's check payable to the Treasurer, United States of America, and remitted to:

Mellon Bank
EPA Region VII
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

53. Pursuant to Section 113(d)(2) of the CAA, Respondent has the right to request a hearing to contest any material fact contained in this Complaint. To preserve this right, Respondent must file a written answer and request for hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, within thirty (30) days of service of this Complaint and Notice of Opportunity to Request a Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- a. The circumstances or arguments that are alleged to constitute the grounds of defense;
- b. The facts that Respondent intends to place at issue; and
- c. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

54. If Respondent requests a hearing, it shall be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 C.F.R. Part 22) (copy enclosed).

55. If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this Complaint and Notice of Opportunity to Request a Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under the Clean Air Act. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

56. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

Settlement Conference

57. Whether or not a Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case and settlement. To request an informal settlement conference, contact Alexander Chen, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, telephone (913)551-7962.

58. A request for an informal settlement conference does not extend the time to answer. Whether or not the informal settlement conference is pursued, to preserve the right to a hearing, a written answer and request for a hearing must be filed within thirty (30) days of service of this Complaint.

59. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement and a Consent Order will be issued by the Regional Judicial Officer, United States Environmental Protection Agency, Region VII. The issuance of such a Consent Agreement and Consent Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date

9-24-99

for Karen A. Thurnoy
William A. Spratlin
Director
Air, RCRA and Toxics Division

Alexander Chen

Alexander Chen
Assistant Regional Counsel

Enclosures: Consolidated Rules of Practice
Clean Air Act Penalty Policy

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101; and a true and correct copy of the foregoing Complaint and a copy of the Consolidated Rules of Practice and the Clean Air Act Penalty Policy were mailed by certified mail, return receipt requested, to:

David Steele, Registered Agent
Air Capitol Plating, Inc.
3900 West Central
Wichita, Kansas 67203

Adam Meek, Esq.
Katten Muchin & Zavis
525 West Monroe Street
Chicago, Illinois 60661-3693

September 30, 1999
Date

Venessa Cobb